UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, NASHVILLE RESIDENT OFFICE

TRW AUTOMOTIVE U.S. LLC

Employer

and **Case 10–UC–231160**

UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 342

the Petitioner

DECISION AND ORDER

After carefully considering the evidence the parties presented in this case, the Employer's motion to dismiss the petition and post-hearing brief, and examining the relevant Board teaching in this area, I find that the Petitioner is estopped from pursuing the unit-clarification it seeks in this case and I will therefore grant the Employer's motion to dismiss this petition. I will also relay my alternate finding the positions the Petitioner seeks to include in the unit are supervisory in any event.

The jobs the Petitioner wishes to clarify into the unit by this proceeding are positions that the Employer created as a result of an agreement the parties entered into in order to resolve a prior unit-clarification petition in Case 10–UC–222189. The parties expressly acknowledged that they were foregoing their right to have the Board determine whether the disputed positions should be clarified into the unit and they decided to resolve that issue themselves. Because the parties previously resolved the issues this petition presents petition, agreeing to forego a unit-clarification determination from the Board, and because both parties have acted on that agreement, I find that the Petitioner is estopped from pursuing the instant unit-clarification petition. In any event, the record evidence establishes that the disputed positions are supervisory.

I. INTRODUCTION

The Employer is TRW Automotive U.S. LLC, a Georgia limited liability company, which has a manufacturing plant in Lebanon, Tennessee, the only facility involved in this proceeding. On November 16, 2018, the Petitioner, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 342, filed this petition under Section 9(c) of the National Labor Relations Act seeking to clarify the existing unit.

The Petitioner currently represents employees about 350 of the Employer's employees at the Lebanon, Tennessee plant in the following unit:

> [P]roduction, quality, materials and maintenance employees in such plant, excluding laboratory technicians, office employees, professional employees, and supervisors as defined in the Act.

The Petitioner seeks in its petition to add to the unit Engineering Technician Supervisors. There are two individuals performing this work in the Employer's Lebanon, Tennessee plant and a third at an Employer facility in Indiana.

On December 11, 2018, I issued a Notice of Hearing scheduling a hearing on the petition to commence on December 20. On December 18, 2018, the Employer filed a motion to dismiss the petition, I concluded that I would decide the motion on the basis of record testimony and evidence obtained at the hearing. A hearing officer of the Board conducted a hearing,[1] which took

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[1] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

b. The Employer, a limited liability company with a manufacturing plant in Lebanon, Tennessee, is engaged in the business of manufacturing active and passive automotive safety products. During the past 12 months, a representative period of time, it sold and shipped goods valued in excess of $50,000 from its Lebanon, Tennessee facility directly to customers located outside the State of Tennessee. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

place on December 20 and 21, 2018 and January 3 and 9, 2019. Although both parties had the opportunity to file a post-hearing brief, only the Employer did so.

II. DISCUSSION

Employer manufactures components for steering gears for automobiles. At its Lebanon, Tennessee plant, the Employer manufactures the parts for these components and then ships those parts to another Employer plant, which assembles the components and ships them to its customers, who are mostly commercial enterprises.

The Employer and the Petitioner have been parties to successive collective-bargaining agreements, the most recent of which runs from September 9, 2018 through August 25, 2023. There are approximately 350 employees in the bargaining unit. The record does not state how long the Petitioner has represented employees in this unit.

In March and April 2018, the Employer promoted three employees to a new Manufacturing Technician position — JR Ratcliffe, from Team Lead on March 5, 2018; and Marco Phillips and David Stafford, from Cell Attendant positions on April 30, 2018. Ratcliffe was working at the Employer's Lafayette, Indiana facility when he received his promotion; he still works at that facility.

The Employer designated Manufacturing Technicians as salaried employees and maintained that they did not belong in the bargaining unit. The Petitioner disagreed, and, on June

c. The Petitioner claims to represent certain employees of the Employer.

d. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

15, 2018, the Petitioner filed a unit-clarification petition in Case 10–UC–222189 to have these individuals included in its existing unit. The Region set a hearing on that matter for July 18, 2018.

On July 18, 2018, before the hearing opened in Case 10–UC–222189, the parties signed a "Settlement Agreement." The agreement provided that the Petitioner and the Employer "have agreed to forego their rights to have the matters . . . decided by the NLRB, and have agreed to resolve the disputes between the parties." They agreed that the Employer would "fill two TWI training positions" and "one Shipping - Team Leader" position, all of which would be "hourly bargaining-unit positions." As to the Manufacturing Technician positions that were the basis of the Petitioner's unit-clarification petition, they agreed that the Manufacturing Technician position "will be changed, and the employees currently performing this role will be placed in a new classification, which the parties agree will be a non-bargaining unit, salaried classification." In exchange, the Petitioner agreed to withdraw its petition in Case 10–UC–222189.

After the parties signed the agreement, the Petitioner, on July 18, 2018, requested withdrawal of the petition in Case 10–UC–222189. I approved the Petitioner's withdrawal request that same day.

In July 2018, consistent with its agreement with Petitioner, the Employer changed the Manufacturing Technician classification to the newly-created Engineering Technician Supervisor classification, assigned that title to Phillips, Ratcliffe, and Stafford, and gave them supervisory authority.[2] Phillips and Ratcliffe began supervising TWI Trainer – Team Leaders Deneen Barr

[2] The evidence demonstrates that the three Engineering Technician Supervisors are supervisors within the meaning of Section 2(11) of the Act. Among other supervisory authority, Engineering Technician Supervisors Phillips, Stafford, and Ratcliffe have the authority to hire employees, discharge and discipline employees, responsibly direct, and to assign work to employees. Specifically, the record demonstrated that Phillips and Stafford on occasion hired employees and on other occasions effectively recommended hire, that Stafford discharged an employee, Ratcliffe has issued discipline, and directs the work of other employees, including approving time-off requests and approving overtime. The Engineering Technician Supervisors

and Ron Mitchell. Stafford works out of the Lafayette, Indiana facility where he runs a department.[3]

In the instant Case 10–UC–231160, the Petitioner contends that the Engineering Technician Supervisors were performing bargaining unit work, share a community of interest with the unit, and therefore should be included in the unit. In its motion to dismiss and in its post-hearing brief, the Employer argues that it is Board policy for parties to resolve their disputes on their own and the Petitioner and Employer did so. The Employer argues it would be contrary to Board policy to permit the Petitioner to capture into the unit the jobs it expressly agreed would be outside the unit. The Employer ultimately concludes that the Region should bar the instant unit-clarification proceeding based on the prior settlement.

III. ANALYSIS

The Board permits parties to enter into agreements to resolve the unit placement of newly created job classifications. Consequently, it has developed a line of cases over the years to determine if the parties had implicitly settled the placement of these positions when they entered into a collective-bargaining agreement without mentioning those new positions, or whether either one of them had reserved the right to seek a unit clarification after entering into the collective-bargaining agreement. See generally *Wallace-Murray Corp.*, 192 NLRB 1090 (1971). Unless a party has clearly reserved that right, the Board will dismiss a unit-clarification filed mid-term

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also attend supervisory meetings, receive different benefits than they did as members of the bargaining unit, and are required to wear different clothing.

[3] Ratcliffe appears to be working out of Indiana because the Employer moved his line there from the Lebanon plant. The record is unclear as to why Ratcliffe is still affiliated with the Lebanon plant.

during a collective-bargaining agreement with a clearly-defined unit. The Board reasons that permitting clarification mid-term "would mean that one of the parties would be able to effect a change in the composition of the bargaining unit during the contract term after it agreed to the unit's definition." *Edison Sault Electric Co*., 313 NLRB 753, 753 (1994), citing *San Jose Mercury & San Jose News*, 200 NLRB 105, 106 (1972); and *Monongahela Power Co*., 198 NLRB 1183, 1183 (1972). That is exactly what the Petitioner is trying to do with the instant unit-clarification petition.

The parties had a dispute over the placement of Manufacturing Technicians in 2018 and the Petitioner filed a unit-clarification petition seeking to include those job classifications in its bargaining unit. Rather than have the Board make the determination, the parties resolved the issue on their own. They agreed, in relevant part, that the "Manufacturing Technician classification at the Lebanon Facility will be changed, and the employees currently performing this role will be placed in a new classification, which the parties agree will be a non-bargaining unit, salaried classification." In return, the Employer agreed that it would create and fill two TWI training positions and and "one Shipping - Team Leader position, which will be hourly bargaining-unit positions." The parties also expressly agreed to "forego their rights to have the matters . . . decided by the NLRB." The Petitioner agreed to withdraw the unit-clarification petition in Case 10–UC–222189 and subsequently did so.

Consistent with the agreement, the Employer moved the incumbent Manufacturing Technicians into its newly created Engineering Technician Supervisor positions. It also hired employees to fill at least two of the three unit positions it agreed to create under the agreement; the TWI training positions. It is not clear from the record that the Employer hired and filled the third unit position, that of the Shipping - Team Leader, but the Petitioner is also not contending that the Employer failed or refused to do so.

Notwithstanding that both the Petitioner and the Employer took the actions the agreement anticipated, the Petitioner has come back to the Board filing what is essentially the same unit-clarification petition that it filed in 2018. Its only basis for, in effect, voiding the parties' 2018 agreement is its claim that Engineering Technician Supervisors are performing bargaining-unit work.

A union's contention that supervisors[4] are performing bargaining-unit work is not an uncommon or unusual occurrence and most unions and employers are able to work out their differences by negotiation or by initiating contractual grievance and arbitration procedures. A unit-clarification petition is not the forum in which to litigate this common, everyday dispute.

Having received the benefit of its agreement resolving the prior unit-clarification petition, the Petitioner "should [not] be permitted to pick and choose which provisions [of that agreement] it wishes to invoke and which it prefers to avoid." *Verizon Information Systems*, 335 NLRB 558, 560 (2001). Having agreed that the Employer may make its Manufacturing Technicians into salaried, nonunit positions, the Petitioner is estopped from thereafter claiming in this subsequent proceeding that that, in addition to the three bargaining-unit positions it got from that agreement, that it should also have included in the unit the Engineering Technician Supervisor positions that arose from the agreement the parties entered into. See Id. The parties also expressly agreed that the Board would not make the unit-placement decision for them and the Petitioner has not provided any basis on which to void that agreement.

Accordingly, I grant the Employer's motion to dismiss the petition.

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[4] While I have concluded that the Engineering Technician Supervisors are statutory supervisors (see footnote 2, above), that is not essential to my determination that the Petitioner is estopped from seeking inclusion of these employees by the instant petition. Whether the employees in that position are supervisory or not, the parties agreed that they would be salaried and not included in the unit.

IV. CONCLUSION

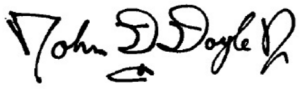
The Petition is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **August 2, 2019**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: July 19, 2019



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